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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>THERMOLIFE INTERNATIONAL, LLC, Plaintiff, vs. VITAL PHARMACEUTICALS, INC., Defendant</p>	<p>Case No. '13CV1015 LAB JMA</p> <p>COMPLAINT FOR PATENT INFRINGEMENT</p> <p>JURY TRIAL DEMANDED</p>
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1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its
 2 Complaint against Vital Pharmaceuticals, Inc. (“Defendant”), on personal knowledge as
 3 to its own activities and on information and belief as to the activities of others, as
 4 follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the
 7 laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,
 8 California, 90291.

9 2. Plaintiff is the exclusive licensee of the following United States Patents:

- 10 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function By
 11 Modulation of Endogenous Nitric Oxide Production or Activity”;
- 12 b. Patent No. 6,117,872, titled “Enhancement of Exercise Performance by
 13 Augmenting Endogenous Nitric Oxide Production or Activity”;
- 14 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function By
 15 Modulation of Endogenous Nitric Oxide Production or Activity”; and
- 16 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function By
 17 Modulation of Endogenous Nitric Oxide Production or Activity.”

18 3. The above patents are owned by The Board of Trustees of the Leland
 19 Stanford Junior University (“Stanford University”) and Plaintiff exclusively licenses
 20 the patents from Stanford University.

21 4. The above patents are referred to herein as the “patents in suit.”

22 5. Plaintiff has been given the right by Stanford University to institute suit
 23 with respect to infringement of the patents in suit, including this suit against Defendant.

24 6. Defendant is a corporation organized and existing under the laws of
 25 Florida with a principal place of business at 1600 North Park Drive in Weston, Florida,
 26 33326-3210.

27 7. Defendant does business as VPX.

II. JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

6 10. This Court has personal jurisdiction over Defendant. By way of example
7 and without limitation, Defendant, directly or through intermediaries (including
8 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,
9 markets, offers for sale, and/or sells dietary supplement products that infringe on one or
10 more claims of the patents in suit (hereinafter the “accused products”), which include
11 without limitation products sold under the “Black Pearl RTD,” “Power Pump 7 w/ Beta
12 Alanine,” “NO Shotgun V3,” “NO Shotgun MHF-1,” and “NO Synthesize” brand
13 names, in the United States, the State of California, and the Southern District of
14 California.

15 11. By way of further example and without limitation, Defendant has
16 purposefully and voluntarily placed the accused products into the stream of commerce
17 with the expectation that they will be purchased in the Southern District of California,
18 and the products are actually purchased in the Southern District of California.

III. THE DEFENDANT'S INFRINGEMENTS

20 12. Defendant has committed the tort of patent infringement within the State
21 of California, and more particularly, within the Southern District of California, by
22 virtue of the fact that Defendant has formulated, made, manufactured, shipped,
23 distributed, advertised, offered for sale, and/or sold the accused products in this District,
24 and continues to do so.

A. DIRECT INFRINGEMENTS

26 13. Defendant's employees, agents, representatives and other persons
27 sponsored by or who endorse Defendant and Defendant's products in advertising and
28 marketing activities, have taken, used, and orally administered the accused products.

1 14. The accused products are formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and sold by Defendant to include certain
3 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
4 of one or more of the patents in suit.

5 15. The accused products are formulated, made, manufactured, shipped,
6 distributed, advertised, offered for sale, and sold by Defendant to include specific
7 ingredients for certain purposes that, by virtue of their inclusion in the products for such
8 purposes, infringe one or more claims of one or more of the patents in suit, and as a
9 result, when Defendant's employees, agents, representatives and other persons
10 sponsored by or who endorse Defendant and Defendant's products in advertising and
11 marketing activities orally administer the accused products, they are practicing the
12 methods disclosed in those claims.

13 16. These infringing ingredients, and/or combinations thereof, include, without
14 limitation, L-Arginine, Arginine Ethyl Ester, L-Norvaline, Diarginine Malate, Citrulline
15 Malate, and GBEE (Gamma-Butyrobetaine Ethyl Ester), as set forth on Defendant's
16 labels.

17 17. The purposes for which these ingredients are included in the accused
18 products are, without limitation, to enhance nitric oxide production, to improve nitric
19 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to
20 enhance physical performance.

21 18. Defendant has encouraged and/or is aware of the fact that its employees,
22 agents, representatives and other persons sponsored by Defendant or who endorse
23 Defendant and Defendant's products in advertising and marketing activities orally
24 administer the accused products and practice the methods disclosed in one or more
25 claim of one or more of the patents in suit, and these employees, agents, representatives
26 and other persons sponsored by Defendant or who endorse Defendant and Defendant's
27 products in advertising and marketing activities are acting under Defendant's direction
28 and control when practicing those methods.

19. Therefore, Defendant is a direct infringer of one or more claims of one or more of the patents in suit, and Defendant practices the methods as set forth in one or more claims of one or more of the patents in suit.

B. INDIRECT INFRINGEMENTS

20. End-users of Defendant's accused products are also direct infringers of one or more claims of one or more of the patents in suit.

21. End-users of Defendant's accused products have taken, used, and orally administered the accused products.

9 22. The accused products are formulated, made, manufactured, shipped,
10 distributed, advertised, offered for sale, and/or sold by Defendant to include certain
11 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
12 of one or more of the patents in suit.

13 23. The accused products are formulated, made, manufactured, shipped,
14 distributed, advertised, offered for sale, and/or sold by Defendant to include specific
15 ingredients for certain purposes that, because of their inclusion in the products for such
16 purposes, infringe one or more claims of one or more of the patents in suit, and as a
17 result, when end-users of Defendant's accused products orally administer the accused
18 products, they are practicing the methods disclosed in those claims.

19 24. Defendant's labels and advertising for the accused products explain the
20 elements and essential elements of one or more of the methods disclosed in the patents
21 in suit, and those labels and advertising statements encourage, urge, and induce the
22 accused products' end-users to purchase and orally ingest the products to practice those
23 methods, and end-users do practice those methods.

24 25. Defendant has therefore specifically intended to cause these end-users to
25 directly infringe the claimed methods of these patents, and has in fact urged them to do
26 so.

27 26. The accused products are not suitable for non-infringing uses, and none of
28 Defendant's labels or advertisements for the accused products disclose any uses for the

1 products, nor for the compounds disclosed in the claimed methods of the patents in suit,
2 that do not infringe upon such methods.

3 27. The inclusion of the specific infringing compounds in the products is
4 material to practicing such methods.

5 28. Defendant has knowledge that the accused products are especially adapted
6 by end-users of the products for the practicing of such methods, and, indeed, Defendant
7 encourages, urges, and induces the accused products' end-users to purchase and orally
8 administer the accused products to practice such methods, and has done so in the past.

9 29. Defendant has intentionally and knowingly induced, encouraged, and
10 urged end-users of the accused products to purchase and orally administer the accused
11 products for the purposes of practicing the claimed methods, by having them orally
12 ingest the compounds disclosed in such claims.

13 30. Defendant has knowledge of the fact that the accused products, particularly
14 as administered, infringe on one or more claims of the patents in suit.

15 31. Defendant has direct, firsthand knowledge of the patents in suit.

16 32. For example and without limitation, Defendant has had knowledge of the
17 patents in suit since November 2006, when an ongoing settlement of a patent
18 infringement case relating to at least some of the patents in suit against Herbalife, a
19 well-known company in Defendant's industry, was announced in press releases issued
20 in a highly publicized manner. Defendant's employees, agents, and representatives saw
21 the press releases and were aware of the settlement and thus the patents in suit.

22 33. By way of further example and without limitation, Defendant has sold its
23 products through retailers, including online retailers, and those retailers have sold other
24 companies' products whose labels and/or advertisements have been prominently
25 marked with one or more of the patents in suit, by patent number, including without
26 limitation the products manufactured and sold by Herbalife, Daily Wellness, and
27 Vitality Research Labs. Defendant's employees, agents, and representatives have seen
28

1 these labels and advertisements and, thus, Defendant has direct knowledge of the
 2 patents in suit.

3 34. Defendant has brazenly and willfully decided to infringe the patents in suit
 4 despite knowledge of the patents' existence and its knowledge of the accused products'
 5 infringements of the patents.

6 35. At a minimum, and in the alternative, Plaintiff pleads that Defendant
 7 willfully blinded itself to the infringing nature of the accused products' sales.

8 36. Defendant has not ceased its own direct infringement, nor its contributory
 9 infringement or inducement of infringement by end-users, despite its knowledge of the
 10 patents in suit and the end-users' infringing activities with respect to the patents in suit.

11 37. Plaintiff also believes Defendant is infringing on one or more claims of
 12 United States Patent No. 5,428,070 and Patent No. 5,945,452, patents which Defendant
 13 has had prior knowledge of and are also licensed exclusively to Plaintiff by Stanford
 14 University, to include the right to sue for infringement, and Plaintiff will seek to amend
 15 this Complaint once facts confirming that belief are ascertained.

16 IV. **FIRST CAUSE OF ACTION**

17 **Infringement of U.S. Patent No. 6,646,006**

18 38. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
 19 of this Complaint as if fully set forth herein.

20 39. Defendant has in the past and still is literally and directly infringing or
 21 directly infringing under the doctrine of equivalents one or more claims of United
 22 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
 23 products, and will continue to do so unless enjoined by this Court.

24 40. In addition to the fact that Defendant makes, uses, sells, and offers for sale
 25 the accused products, further examples of Defendant's direct infringements include,
 26 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
 27 that its employees, agents, representatives and other persons sponsored by or who
 28 endorse Defendant and Defendant's products in advertising and marketing activities

1 orally administer the accused products and practice the methods disclosed in one or
2 more claims of United States Patent No. 6,646,006, and these employees, agents,
3 representatives and other persons sponsored by or who endorse Defendant and
4 Defendant's products in advertising and marketing activities are acting under
5 Defendant's direction and control when practicing those methods.

6 41. Defendant has encouraged and is aware of these persons' oral
7 administration of the accused products for these purposes, these persons are acting
8 under Defendant's direction and control, and therefore Defendant is directly practicing
9 the methods disclosed in United States Patent No. 6,646,006.

10 42. End-users of Defendant's accused products are also direct infringers of one
11 or more claims of United States Patent No. 6,646,006.

12 43. End-users of Defendant's accused products have taken, used, and orally
13 administered the accused products.

14 44. The accused products are formulated, made, manufactured, shipped,
15 distributed, advertised, offered for sale, and sold by Defendant to include certain
16 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
17 of United States Patent No. 6,646,006.

18 45. The accused products is formulated, made, manufactured, shipped,
19 distributed, advertised, offered for sale, and sold by Defendant to include specific
20 ingredients for purposes that, by their inclusion in the products for such purposes,
21 infringe one or more claims of United States Patent No. 6,646,006, and as a result,
22 when end-users of Defendant's accused products orally administer the accused
23 products, they are practicing the methods disclosed in one or more claims of that patent.

24 46. Defendant's labels and advertising for the accused products explain the
25 elements and essential elements of the methods disclosed in United States Patent No.
26 6,646,006, and those labels and advertising statements encourage, urge, and induce the
27 accused products' end-users to purchase and orally ingest the products to practice those
28 methods, and end-users do practice those methods.

1 47. Defendant has therefore specifically intended to cause these end-users to
2 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in
3 fact urged them to do so.

4 48. The accused products are not suitable for non-infringing uses, and none of
5 Defendant's labels or advertisements for the accused products disclose any uses for the
6 products, nor for the compounds disclosed in the claimed methods, that do not infringe
7 upon such methods.

8 49. The inclusion of these specific infringing compounds in the products is
9 material to practicing such methods.

10 50. Defendant has knowledge that the accused products are especially adapted
11 by end-users of the products for the practicing of such methods, and, indeed, Defendant
12 encourages, urges, and induces the accused products' end-users to purchase and orally
13 administer the accused products to practice such methods, and have done so in the past.

14 51. Defendant has intentionally and knowingly induced, encouraged, and
15 urged end-users of the accused products to purchase and orally administer the accused
16 products for the purposes disclosed in one or more claims of United States Patent No.
17 6,646,006, by having them orally ingest the compounds disclosed in such claims.

18 52. Defendant has knowledge of the fact that the accused products, particularly
19 as administered, infringe on one or more claims of United States Patent No. 6,646,006.

20 53. Defendant also has direct, firsthand knowledge of United States Patent No.
21 6,646,006.

22 54. Defendant's activities have been without express or implied license by
23 Plaintiff.

24 55. As a result of Defendant's acts of infringement, Plaintiff has suffered and
25 will continue to suffer damages in an amount to be proved at trial.

26 56. As a result of Defendant's acts of infringement, Plaintiff has been and will
27 continue to be irreparably harmed by Defendant's infringements, which will continue
28 unless Defendant is enjoined by this Court.

1 57. Defendant's past infringements and/or continuing infringements have been
 2 deliberate and willful, and this case is therefore an exceptional case, which warrants an
 3 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

4 **V. SECOND CAUSE OF ACTION**

5 **Infringement of U.S. Patent No. 5,891,459**

6 58. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
 7 of this Complaint as if fully set forth herein.

8 59. Defendant has in the past and still is literally and directly infringing or
 9 directly infringing under the doctrine of equivalents one or more claims of United
 10 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused
 11 products, and will continue to do so unless enjoined by this Court.

12 60. In addition to the fact that Defendant makes, uses, sells, and offers for sale
 13 the accused products, further examples of Defendant's direct infringements include,
 14 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
 15 that its employees, agents, representatives and other persons sponsored by or who
 16 endorse Defendant and Defendant's products in advertising and marketing activities
 17 orally administer the accused products and practice the methods disclosed in one or
 18 more claims of United States Patent No. 5,891,459, and these employees, agents,
 19 representatives and other persons sponsored by or who endorse Defendant and
 20 Defendant's products in advertising and marketing activities are acting under
 21 Defendant's direction and control when practicing those methods.

22 61. Defendant has encouraged and is aware of these persons' oral
 23 administration of the accused products for these purposes, these persons are acting
 24 under Defendant's direction and control, and therefore Defendant is directly practicing
 25 the methods disclosed in United States Patent No. 5,891,459.

26 62. End-users of Defendant's accused products are also direct infringers of one
 27 or more claims of United States Patent No. 5,891,459.

1 63. End-users of Defendant's accused products have taken, used, and orally
2 administered the accused products.

3 64. The accused products are formulated, made, manufactured, shipped,
4 distributed, advertised, offered for sale, and sold by Defendant to include certain
5 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
6 of United States Patent No. 5,891,459.

7 65. The accused products is formulated, made, manufactured, shipped,
8 distributed, advertised, offered for sale, and sold by Defendant to include specific
9 ingredients for purposes that, by their inclusion in the products for such purposes,
10 infringe one or more claims of United States Patent No. 5,891,459, and as a result,
11 when end-users of Defendant's accused products orally administer the accused
12 products, they are practicing the methods disclosed in one or more claims of that patent.

13 66. Defendant's labels and advertising for the accused products explain the
14 elements and essential elements of the methods disclosed in United States Patent No.
15 5,891,459, and those labels and advertising statements encourage, urge, and induce the
16 accused products' end-users to purchase and orally ingest the products to practice those
17 methods, and end-users do practice those methods.

18 67. Defendant has therefore specifically intended to cause these end-users to
19 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in
20 fact urged them to do so.

21 68. The accused products are not suitable for non-infringing uses, and none of
22 Defendant's labels or advertisements for the accused products disclose any uses for the
23 products, nor for the compounds disclosed in the claimed methods, that do not infringe
24 upon such methods.

25 69. The inclusion of these specific infringing compounds in the products is
26 material to practicing such methods.

27 70. Defendant has knowledge that the accused products are especially adapted
28 by end-users of the products for the practicing of such methods, and, indeed, Defendant

1 encourages, urges, and induces the accused products' end-users to purchase and orally
2 administer the accused products to practice such methods, and have done so in the past.

3 71. Defendant has intentionally and knowingly induced, encouraged, and
4 urged end-users of the accused products to purchase and orally administer the accused
5 products for the purposes disclosed in one or more claims of United States Patent No.
6 5,891,459, by having them orally ingest the compounds disclosed in such claims.

7 72. Defendant has knowledge of the fact that the accused products, particularly
8 as administered, infringe on one or more claims of United States Patent No. 5,891,459.

9 73. Defendant also has direct, firsthand knowledge of United States Patent No.
10 5,891,459.

11 74. Defendant's activities have been without express or implied license by
12 Plaintiff.

13 75. As a result of Defendant's acts of infringement, Plaintiff has suffered and
14 will continue to suffer damages in an amount to be proved at trial.

15 76. As a result of Defendant's acts of infringement, Plaintiff has been and will
16 continue to be irreparably harmed by Defendant's infringements, which will continue
17 unless Defendant is enjoined by this Court.

18 77. Defendant's past infringements and/or continuing infringements have been
19 deliberate and willful, and this case is therefore an exceptional case, which warrants an
20 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

21 **VI. THIRD CAUSE OF ACTION**

22 **Infringement of U.S. Patent No. 7,452,916**

23 78. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
24 of this Complaint as if fully set forth herein.

25 79. Defendant has in the past and still is literally and directly infringing or
26 directly infringing under the doctrine of equivalents one or more claims of United
27 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused
28 products, and will continue to do so unless enjoined by this Court.

1 80. In addition to the fact that Defendant makes, uses, sells, and offers for sale
2 the accused products, further examples of Defendant's direct infringements include,
3 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
4 that its employees, agents, representatives and other persons sponsored by or who
5 endorse Defendant and Defendant's products in advertising and marketing activities
6 orally administer the accused products and practice the methods disclosed in one or
7 more claims of United States Patent No. 7,452,916, and these employees, agents,
8 representatives and other persons sponsored by or who endorse Defendant and
9 Defendant's products in advertising and marketing activities are acting under
10 Defendant's direction and control when practicing those methods.

11 81. Defendant has encouraged and is aware of these persons' oral
12 administration of the accused products for these purposes, these persons are acting
13 under Defendant's direction and control, and therefore Defendant is directly practicing
14 the methods disclosed in United States Patent No. 7,452,916.

15 82. End-users of Defendant's accused products are also direct infringers of one
16 or more claims of United States Patent No. 7,452,916.

17 83. End-users of Defendant's accused products have taken, used, and orally
18 administered the accused products.

19 84. The accused products are formulated, made, manufactured, shipped,
20 distributed, advertised, offered for sale, and sold by Defendant to include certain
21 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
22 of United States Patent No. 7,452,916.

23 85. The accused products is formulated, made, manufactured, shipped,
24 distributed, advertised, offered for sale, and sold by Defendant to include specific
25 ingredients for purposes that, by their inclusion in the products for such purposes,
26 infringe one or more claims of United States Patent No. 7,452,916, and as a result,
27 when end-users of Defendant's accused products orally administer the accused
28 products, they are practicing the methods disclosed in one or more claims of that patent.

1 86. Defendant's labels and advertising for the accused products explain the
 2 elements and essential elements of the methods disclosed in United States Patent No.
 3 7,452,916, and those labels and advertising statements encourage, urge, and induce the
 4 accused products' end-users to purchase and orally ingest the products to practice those
 5 methods, and end-users do practice those methods.

6 87. Defendant has therefore specifically intended to cause these end-users to
 7 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in
 8 fact urged them to do so.

9 88. The accused products are not suitable for non-infringing uses, and none of
 10 Defendant's labels or advertisements for the accused products disclose any uses for the
 11 products, nor for the compounds disclosed in the claimed methods, that do not infringe
 12 upon such methods.

13 89. The inclusion of these specific infringing compounds in the products is
 14 material to practicing such methods.

15 90. Defendant has knowledge that the accused products are especially adapted
 16 by end-users of the products for the practicing of such methods, and, indeed, Defendant
 17 encourages, urges, and induces the accused products' end-users to purchase and orally
 18 administer the accused products to practice such methods, and have done so in the past.

19 91. Defendant has intentionally and knowingly induced, encouraged, and
 20 urged end-users of the accused products to purchase and orally administer the accused
 21 products for the purposes disclosed in one or more claims of United States Patent No.
 22 7,452,916, by having them orally ingest the compounds disclosed in such claims.

23 92. Defendant has knowledge of the fact that the accused products, particularly
 24 as administered, infringe on one or more claims of United States Patent No. 7,452,916.

25 93. Defendant also has direct, firsthand knowledge of United States Patent No.
 26 7,452,916.

27 94. Defendant's activities have been without express or implied license by
 28 Plaintiff.

1 95. As a result of Defendant's acts of infringement, Plaintiff has suffered and
 2 will continue to suffer damages in an amount to be proved at trial.

3 96. As a result of Defendant's acts of infringement, Plaintiff has been and will
 4 continue to be irreparably harmed by Defendant's infringements, which will continue
 5 unless Defendant is enjoined by this Court.

6 97. Defendant's past infringements and/or continuing infringements have been
 7 deliberate and willful, and this case is therefore an exceptional case, which warrants an
 8 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

9 **VII. FOURTH CAUSE OF ACTION**

10 **Infringement of U.S. Patent No. 6,117,872**

11 98. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
 12 of this Complaint as if fully set forth herein.

13 99. Defendant has in the past and still is literally and directly infringing or
 14 directly infringing under the doctrine of equivalents one or more claims of United
 15 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused
 16 products, and will continue to do so unless enjoined by this Court.

17 100. In addition to the fact that Defendant makes, uses, sells, and offers for sale
 18 the accused products, further examples of Defendant's direct infringements include,
 19 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
 20 that its employees, agents, representatives and other persons sponsored by or who
 21 endorse Defendant and Defendant's products in advertising and marketing activities
 22 orally administer the accused products and practice the methods disclosed in one or
 23 more claims of United States Patent No. 6,117,872, and these employees, agents,
 24 representatives and other persons sponsored by or who endorse Defendant and
 25 Defendant's products in advertising and marketing activities are acting under
 26 Defendant's direction and control when practicing those methods.

27 101. Defendant has encouraged and is aware of these persons' oral
 28 administration of the accused products for these purposes, these persons are acting

1 under Defendant's direction and control, and therefore Defendant is directly practicing
2 the methods disclosed in United States Patent No. 6,117,872.

3 102. End-users of Defendant's accused products are also direct infringers of one
4 or more claims of United States Patent No. 6,117,872.

5 103. End-users of Defendant's accused products have taken, used, and orally
6 administered the accused products.

7 104. The accused products are formulated, made, manufactured, shipped,
8 distributed, advertised, offered for sale, and sold by Defendant to include certain
9 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
10 of United States Patent No. 6,117,872.

11 105. The accused products is formulated, made, manufactured, shipped,
12 distributed, advertised, offered for sale, and sold by Defendant to include specific
13 ingredients for purposes that, by their inclusion in the products for such purposes,
14 infringe one or more claims of United States Patent No. 6,117,872, and as a result,
15 when end-users of Defendant's accused products orally administer the accused
16 products, they are practicing the methods disclosed in one or more claims of that patent.

17 106. Defendant's labels and advertising for the accused products explain the
18 elements and essential elements of the methods disclosed in United States Patent No.
19 6,117,872, and those labels and advertising statements encourage, urge, and induce the
20 accused products' end-users to purchase and orally ingest the products to practice those
21 methods, and end-users do practice those methods.

22 107. Defendant has therefore specifically intended to cause these end-users to
23 directly infringe the claimed methods of United States Patent No. 6,117,872, and has in
24 fact urged them to do so.

25 108. The accused products are not suitable for non-infringing uses, and none of
26 Defendant's labels or advertisements for the accused products disclose any uses for the
27 products, nor for the compounds disclosed in the claimed methods, that do not infringe
28 upon such methods.

109. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

110. Defendant has knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendant encourages, urges, and induces the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

111. Defendant has intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 6,117,872, by having them orally ingest the compounds disclosed in such claims.

112. Defendant has knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 6,117,872.

113. Defendant also has direct, firsthand knowledge of United States Patent No. 6,117,872.

114. Defendant's activities have been without express or implied license by Plaintiff.

115. As a result of Defendant's acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

116. As a result of Defendant's acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendant's infringements, which will continue unless Defendant is enjoined by this Court.

117. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows:

1. A declaration that Defendant has infringed the patents in suit, under 35 U.S.C. §§ 271 *et seq.*;

3. That injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, the patents in suit:

4. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the patents in suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

5. That the damages awarded to Plaintiff with regard to the patents in suit be increased up to three times, in view of Defendant's willful infringement, in accordance with 35 U.S.C. § 284;

6. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

7. That Plaintiff be awarded its interest and costs of suit incurred in this action;

8. Compensatory damages;

9. Punitive damages; and

10. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,
NEWPORT TRIAL GROUP
A Professional Corporation

Dated: April 29, 2013

By: Tyler J. Woods
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,

**NEWPORT TRIAL GROUP
A Professional Corporation**

Dated: April 29, 2013

By: Tyler J. Woods
Attorneys for Plaintiff